

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED
May 15, 2012

No. 11-50857
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JULIO LEMOS-ZAMORA, also known as Carlos Aldana-Soriano,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:11-CR-494-1

Before BENAVIDES, STEWART, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Julio Lemos-Zamora appeals the 46-month within-guidelines sentence imposed following his guilty plea conviction for illegal reentry in violation of 8 U.S.C. § 1326. Lemos-Zamora argues that his sentence is unreasonable as measured by the factors in 18 U.S.C. § 3553(a). He also argues that his within-guidelines sentence is not entitled to a presumption of reasonableness because the illegal reentry Guidelines are not empirically based. As acknowledged by Lemos-Zamora, that argument is foreclosed. *See United States v. Duarte*, 569

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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F.3d 528, 529-31 (5th Cir. 2009); *United States v. Mondragon-Santiago*, 564 F.3d 357, 366-67 (5th Cir. 2009).

Because Lemos-Zamora's arguments fail under either a plain error or an abuse of discretion standard of review, we need not decide whether, despite his arguments in the district court in support of a downward variance, Lemos-Zamora's failure to object to the reasonableness of his sentence results in plain error review.

The record reflects that the district court considered Lemos-Zamora's mitigation arguments, weighed the § 3553(a) factors, and provided a reasoned basis for its decision. Lemos-Zamora's disagreement with the district court's balancing of the § 3553(a) factors is insufficient to establish error on the district court's part. *See United States v. Gomez-Herrera*, 523 F.3d 554, 565-66 (5th Cir. 2008). Lemos-Zamora has failed to establish that his sentence, which is entitled to a presumption of reasonableness, was the result of error, much less plain error. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *Mondragon-Santiago*, 564 F.3d at 366-67. The district court's judgment is AFFIRMED.